

# A Case From Workers' Comp Hell

## (How a large sophisticated business got messed over by their large sophisticated law firm)

Written in 2002, and reformatted in 2019

This true Workers' Compensation case was co-written by Emma and Eliot in 2002. It was meant to be part of a book explaining the dysfunctional and corrupt California Workers' Compensation system. However, life took its twists and turns, and we eventually decided to shelve that project. This stand-alone story is yet another example of how corrupt lawyers and our legal system is, and an overview of how the California Workers' Compensation system works. And doesn't work. Really, no kidding, this is a true story. Honest!

### Setting the Stage

Ms. Joyless, a widowed mother of two teenage sons, was one of Business Middlemen's sales force made up of independent contractors. This meant that she didn't work for Business Middlemen, but for herself. She did her work from one of Business Middlemen's office suites, she got sales leads from Business Middlemen, they gave her forms and contracts to use in making sales pitches and signing up new clients, and she used their fee schedule when quoting prices. For being an independent contractor, she was paid slightly more than the going wages and commissions an employee in her industry would get. While she got paid marginally more, she was responsible for her own taxes, which were not withheld by Business Middlemen, she had to keep more business records than if she were an employee, and she did not get vacation pay, sick pay, health insurance and other standard benefits employees of mid and large sized companies get. Ms. Joyless did not want to be classified as an independent contractor, but she needed a job, which she found hard to get in late 1989, a time of economic recession. It was either sign an employment contract saying that she agreed to be classified as an independent contractor, or keep looking for work. She signed the agreement.

One day in 1991 in Los Angeles, Ms. Joyless was driving her car during business hours on her way to a sales meeting with a client. She went through a stop sign and got into an accident. Not a fender bender, but one serious enough to badly damage if not total her car and put her in the hospital with three broken ribs, back injuries, and cuts and bruises. Needless to say, she didn't return to work that day. The next day one of her teenage sons called Business Middlemen and told them about his mother's accident. The company was unsympathetic about Ms. Joyless' damaged body and car. They terminated her because she was unavailable to do her work. Since she was an independent contractor, she wasn't entitled to get unemployment insurance, and she was left to her own devices for paying her bills, which included the hospital bill, her mortgage, and daily expenses for her two teenage boys. She didn't have business car insurance, and her insurance company refused to pay for her car repairs because the accident happened while she was working. As time went by and Ms. Joyless realized

that she might not be able to work for quite a while, she got depressed. She didn't know what to do.

Some of her friends suggested that she find a lawyer. Ms. Joyless didn't know what a lawyer could do for her, but she was desperate, and through a network of informal referrals, she made an appointment with Mr. Average. Mr. Average is a small time lawyer who specializes in Workers' Compensation cases. When they met at her home he asked Ms. Joyless what she did at Business Middlemen, what her work day was like, who she reported to at the company, and dozens of similar questions. Ms. Joyless didn't understand why she was being asked all these questions, and was worried that she was going to be charged by Mr. Average for the long time the meeting was taking. Although she worked in sales in the U.S. for years, she was born in Europe and English was not her first language. She realized that under pressure, she was having trouble finding the right words to express herself, and she wasn't sure she understood all the questions Mr. Average was asking. She finally voiced these concerns to Mr. Average, who assured her that there was no charge for the consultation, and if he pursued a lawsuit on her behalf, there wouldn't be any bills from him at all. He would be paid a percentage of what she was awarded by a Workers' Compensation Judge, which is usually, but not always, fifteen percent. This money would be deducted from the money the judge awarded her. Moreover, Mr. Average told her that while her English was fine, she could have an interpreter when she had to give testimony. He then told Ms. Joyless that he thought she had a good case, briefly explained what Workers' Compensation was and how it worked, and asked if she wanted him to try to get her money for her lost wages. She said that was exactly what she wanted, and a week later Mr. Average filed a routine Workers' Compensation law suit on Ms. Joyless' behalf.

As for what Mr. Average told Ms. Joyless Workers Compensation was designed to do, he told her that a long time ago, if a worker was injured or became ill on the job, he had no rights. The employer could choose to fire him if he wished, and certainly had no obligation to help him. The Workers' Compensation system was designed to provide medical care and income for the employee.

About two months went by and Ms. Joyless hadn't heard from Mr. Average. She called and asked him when she could expect money, and how much, since she didn't have any income. Mr. Average refreshed her memory about what he told her the first day they met: Workers' Compensation cases could take quite some time to complete, probably a few years, and he really didn't know how much the judge would award her, but he thought it would probably be in the \$35,000 range.

When Ms. Joyless asked how she was supposed to pay her bills, since she was still unable to work, Mr. Average told her to come to his office and he would help her fill out California State Employment Disability Department (EDD) forms, and eventually she would get some disability insurance money from the State. EDD would file a lien with the Workers' Compensation Court, asking the judge in her case to award them the amount of money they gave to her. If the judge did this, the money given by the State to Ms. Joyless would be paid back to the State by the Workers' Compensation insurance company used by the business Ms. Joyless worked for when she had her accident. Mr.

Average mentioned that under very unusual circumstances, EDD might ask a judge to order Ms. Joyless to repay them. Ms. Joyless sighed, realizing that she was getting an education in the legal system, when all she wanted was some money to pay her bills until she was healthy enough to find another job.

Business Middlemen is a fairly large company, but had relatively few employees since most of the workers were in the sales force, and *they were classified as independent contractors*. The company was *self insured* for matters such as liability for accidents, which their accounting department determined saved a lot of money in insurance premiums. Just as Ms. Joyless was beginning to discover the extent of her problems caused by the auto accident, the Vice President in charge of legal matters for Business Middlemen, Mr. Anthony Sonoftheboss, was trying to evaluate the possible ramifications caused by the lawsuit filed by Mr. Average on Ms. Joyless' behalf. He wasn't worried about the possibility of having to pay Ms. Joyless money for lost compensation and commissions, or even for illegal termination. That kind of money was pocket change for Business Middlemen. What Mr. Sonoftheboss was worried about was the IRS. Actually, "worried" doesn't adequately describe his feelings. He was scared.

Mr. Sonoftheboss knew that the 1,500 people who made up the sales force and were classified as independent contractors were actually full time employees. Classifying them as independent contractors gave Business Middlemen certain tax advantages and a competitive edge since the workers weren't given vacation pay, paid sick days off, medical insurance and other customary benefits. By keeping Withholding Tax and Social Security money they should have sent to the IRS, and in taxes not sent to the states they did business in, Business Middlemen's bottom line looked much better than it would if their sales force was classified as employees. Mr. Sonoftheboss knew that the company had been improperly classifying people for many years, and the amount of back taxes owed plus interest and penalties would be substantial.

Additionally, they would have to start paying the workers a standard amount for sick pay, vacation pay, etc. The sales people might even become unionized. But what worried Mr. Sonoftheboss the most was that it might be argued, probably successfully, that Business Middlemen should have known better, and so there could be criminal conspiracy issues involving the management of the company. Their accountants might also be subject to criminal charges and possibly losing any licenses they had, although Mr. Sonoftheboss wasn't concerned about this eventuality. That would be the accountants problem.

Mr. Sonoftheboss knew that the company's secret had to remain just that, a secret. If the IRS got wind of it, there would be hell to pay. Mr. Sonoftheboss reasoned that if the Workers' Compensation judge ruled that Ms. Joyless was an employee of Business Middlemen, then it would be on record that they had improperly classified one employee, and by extension, all the other people doing the same job as Ms. Joyless who were also classified as independent contractors. The cat would be out of the bag. Mr. Sonoftheboss thought the IRS would be bound to find out once the judge made his ruling. Since it was a Workers' Compensation law suit that was the potential undoing of the company, and of his father who was the CEO, Mr. Sonoftheboss asked his legal

staff and other attorneys to find him a top defense law firm that specialized in Workers' Compensation cases.

Mr. Shmoozer, the senior partner of the Workers' Compensation law firm of Shmoozer and Arrogant, flew in his corporate jet from his corporate headquarters in Southern California to San Francisco, to personally chat with Mr. Sonoftheboss. He did this because he realized that Business Middlemen would be a profitable company to have as a client. He thought that some personal shmoozing was called for. Mr. Shmoozer, a very likable man who gained people's confidence easily, asked Mr. Sonoftheboss questions concerning the case. Why, for instance, was Business Middlemen interested in hiring a law firm that might charge \$300 per hour per attorney working on the case, to fight what seemed like a routine and legally uninteresting law suit? Mr. Sonoftheboss said that the person filing the law suit was never an employee of Business Middlemen, but actually an independent contractor, and so the company didn't feel obligated to pay her anything. Mr. Shmoozer persisted, asking again why his large and powerful law firm was needed, and why a smaller firm wouldn't do.

Mr. Sonoftheboss tried to avoid the issue, but finally relented and said that the law suit represented some possible serious consequences for his company, since it was arguable that Ms. Joyless was actually an employee, even though she was on the company books as an independent contractor. Mr. Shmoozer started to see the bigger picture. "You mean that there are tax consequences?", he asked. "Yes", said Mr. Sonoftheboss. "If you want me to be able to help, you have to tell me everything", said Mr. Shmoozer. "Yes, I understand, well, it seems that we have a large number of individuals that we have classified as independent contractors. By doing this we gain certain tax advantages, and a certain edge over our competition", replied Mr. Sonoftheboss.

Mr. Shmoozer realized that the real mission of his law firm, should he decide to take the assignment, was to safeguard Business Middlemen's secret, that is, to keep the IRS from getting wind that something wasn't Kosher in the accounting department of Business Middlemen. Mr. Shmoozer started seeing dollar signs in his head. He knew that Workers' Compensation cases, as least those in California where this law suit was filed, took years to conclude. Three years would be a quick case, six years about average, and ten or more years would be long, but certainly not unheard of. Billing a few hundred hours per year at \$300 an hour for ten years would amount to a tidy sum. And since there was almost no work involved, and most of the hours billed would be phantom hours, this case was too good to let go.

"Mr. Sonoftheboss, Anthony, I can help you. With the resources and experience of my firm behind you, rest assured that your company's secret will remain just that, a secret. I'll handle as much of the work as I can myself, and when I can't, I'll have my partner, Mr. Arrogant, take over. I can see how important winning this case is to your company, and to your father. Don't worry about a thing". Mr. Sonoftheboss's eyes smiled, and he felt confident that he made the right decision in contacting Mr. Shmoozer's firm. Shmoozer and Arrogant came very highly recommended, and Mr. Shmoozer had a way of putting him at ease. He had been told that the law firm of Shmoozer and Arrogant was very expensive, but that only meant that they were good,

and the money was tax deductible anyway. And Mr. Shmoozer seemed to understand just how difficult a position Business Middlemen was in, and he said, without any hesitation, that he could help. "Dad will be pleased", Mr. Sonoftheboss said. Mr. Shmoozer smiled. Mr. Shmoozer wanted to get Ms. Joyless' personnel file, so Mr. Sonoftheboss walked him over to the personnel department.

## **How the Workers Comp court system works in California**

At this point the Workers' Compensation dance began in earnest. From time to time Mr. Average would contact Ms. Joyless to refer her to doctors for evaluation and treatment. These doctors, chosen by Mr. Average, tend to be biased in favor of injured workers. Some of these doctors just examined her and wrote reports which would be used in court to prove the extent of her injuries, that she was truly disabled and unable to work, etc. Other doctors actually treated Ms. Joyless' injuries, and prescribed medication to ease her pain.

Since Ms. Joyless was nearly destitute and couldn't pay for a doctor, let alone numerous doctors, she was very relieved that the doctors she went to offered their services on a lien basis. This meant that they would wait for payment until her case was resolved, and then they expected to be paid by Ms. Joyless' former employer, Business Middlemen. These doctors take cases like this based on an attorney's word that the lawsuit was a good case and that they will eventually get paid, because the injured worker would win the law suit. The fees charged by the doctors are set by the State, and are generally lower than they would charge a private patient.

The doctors working within the Workers' Compensation lien system take their chances on getting paid, and rely heavily on the word of the referring attorney when deciding whether or not to accept a Workers' Compensation patient. Doctors who just write reports, and don't give treatment, almost always get paid, even if the worker loses the case, since they are considered to be doing work for the Court. Those who give treatment will only get paid if the worker wins the case. For instance, if the Judge ruled that Ms. Joyless was not an employee but really an independent contractor, then Business Middlemen wouldn't be liable to pay for any of Ms. Joyless' treatment. After all, if she didn't work for them, why would they be obligated to pay her bills? So doctors who work on a lien basis in Workers' Compensation cases rely on the evaluation, judgment and assessment of the attorney who hires them. Since they are not attorneys, they only have the word of the attorney that the injured worker has a good case, to guide them. As well as anything they've learned from experience over the years.

Doctors aren't the only people who work on a lien basis. As mentioned earlier, EDD, the State agency which administers disability insurance in California, hoped to get the money they gave to Ms. Joyless repaid to them by Business Middlemen, as do the physical therapists, pharmacists, and others who also work on a lien basis. All accept work on a case if the attorney contacting them tells them it's a good case and they will eventually get paid.

Ms. Joyless not only had a series of numerous medical exams ahead of her, but also a regime of depositions, court hearings and most frustrating of all, delays, to look forward to. Not only did the law firm of Shmoozer and Arrogant prepare to argue that Ms. Joyless was in fact an independent contractor, but also that she wasn't injured seriously in the accident, so that her claim of back pain was bogus, and that she was "fired" because she was incompetent, not because she was unable to work due to her injuries.

Mr. Average found this out when meeting with Mr. Arrogant at court hearings designed to get the two parties to negotiate with each other. These *mandatory settlement conferences* were face to face meetings among the parties, with nothing else scheduled to happen. Just an opportunity for a possible settlement to be agreed to. Because it wasn't unusual for either Mr. Average or Mr. Arrogant to need additional time to review documents, or get another report from another doctor, the mandatory settlement conferences were rescheduled numerous times, over many years.

Mr. Shmoozer and Mr. Arrogant couldn't just tell the court that they believed that Ms. Joyless was faking the extent of her injuries, and that she really was an independent contractor. They had to have evidence to show the judge. They sent Ms. Joyless to their doctors who, not surprisingly, thought that her injuries were not debilitating but only minor, and that she was capable of working right now. She was, in their opinion, faking the extent of her injuries. Since she no longer had a car, and since this was taking place in Southern California, where public transportation exists only in theory, she had to ask a friend to take time off from work to take her to and from the doctors. Her accident was beginning to take its toll among her friends who were starting to back away from her. This added to Ms. Joyless' growing depression.

Mr. Shmoozer and Mr. Arrogant sent her to five different doctors, each a specialist in a different field, spread over nine years. (Yes, nine years. This turned out to be a rather long lasting case.) Ms. Joyless found each of these visits unpleasant, not only because she had to impose on a friend to take her to the appointment, but because she didn't want men whom she didn't know touching her. Further, she knew that the questions many of them asked were designed to make her look bad, and show that she was faking her back injuries. She started dreading the next visit to the next defense doctor.

As for Mr. Shmoozer and Mr. Arrogant's contention that she really was an independent contractor, they found the contract signed by Ms. Joyless in her personnel file. The contract stated that she was going to work with Business Middlemen as an independent contractor in their sales department. It was questionable whether the contract was legally sound. Ms. Joyless had been presented with the contract and told to sign it when she was hired by the company. Since English was not her first language, and since there was a great deal of legal sounding jargon in the contract which was not explained to her, she asked to take the contract home and have someone look it over. The personnel manager would not let her take it home unless she signed it first. Since she was desperate for a job, she signed it and hoped for the best. Mr. Shmoozer and Mr. Arrogant intended to use the contract as proof that Ms. Joyless was, by her own admission, not an employee of Business Middlemen, but an independent contractor.

At this point in our story, I think it's best to describe a typical Workers' Compensation Court in California. Most people's concept of a courtroom comes from what they see depicted in movies and on TV, including Judge Judy and Judge Wapner shows. However, although some of the Workers' Compensation courtrooms are nicely furnished with wooden tables and padded chairs and a raised platform for the judge's bench, a more typical Workers' Compensation courtroom in California can range from looking like a large high school classroom, without the desks, to a large closet, without the coats.

Try to envision a courtroom in a wealthier third world country, and you won't be far from how some of these courtrooms look. There may or may not be a State or National flag. There are some chairs, often of the folding variety, but sometimes more comfortable ones with cushioned seats. Most of the chairs surround one or more folding utility type tables, on which are placed the court files for the cases scheduled for that day. Lawyers, and sometimes non-lawyers called Hearing Representatives, sit at the tables and go through the files, and talk with each other. Sometimes they talk about their case, trying to negotiate a settlement, or they may trade technical information and documents with each other, or they may talk about their hobbies. Additional chairs can often be found against a back wall, for any overflow of lawyers and representatives, or for the public. The judge's table is sometimes just that, a folding card or utility table that is separated from the table or tables the lawyers sit at.

If the lawyers meeting at court can't come to a negotiated settlement, they may schedule another meeting to either continue the negotiations or to move one step closer to actually going to trial. True, the lawyers can negotiate by telephone any time they want, but the lawyers hired by a businesses insurance company or by a self insured business, get paid a few hundred dollars per hour for going to court, so it's to their advantage to drag out the negotiations, and appear at the court as often as possible before they are forced to go to the next step.

In Workers' Compensation court, unlike in other courts, hearings are not scheduled sequentially, day after day, but spread out over time. Several months generally separate one mandatory settlement conference from another, or one day of a trial from the next. Further, there a number of different trials and conferences scheduled each day in the same courtroom for the same time, so it is usual that the parties for one case will show up for a scheduled trial and find that another case will be heard that day, instead of theirs. In these instances, the trial is rescheduled for another day, usually 12-20 weeks away, and the parties hope that on that day they will be the ones whose case is heard, while other people go home and wait for another day.

Those lawyers like Mr. Shmoozer and Mr. Arrogant who get paid by the hour don't mind the delays, since they bill for the time they sit in court waiting to find out if their case will be heard that day, plus traveling time to and from the court. At \$300 an hour, Mr. Shmoozer and Mr. Arrogant could each bill \$900 to \$1,200 for going to court, waiting to be told that their case was put off for another day, and traveling back to their office. With the proliferation of cell phones, Mr. Shmoozer and Mr. Arrogant make good use of their "down time". They call other clients, chat a few moments, and then bill \$75

for each call they make, while also billing the client they are in court for.

To a great extent, Workers' Compensation lawyers make up a motley crew. Most do not work for a law firm, large or small, but for themselves. Some are competent attorneys, and a few are very competent and could be successful practicing any type of law. But most seem to be fatally flawed in some way. Some look, and act, like alcoholics or substance abusers, some seem like race track touts, some have become overly interested in stock market "day trading", some have severe personality problems which keep them from working in a law firm, since they have trouble getting along with people, and some just aren't very bright. These flawed lawyers make it easy for those few lawyers who are more together to do well for their clients, and for themselves.

Because of a twist in this case, it is important that you understand what a Hearing Representative is. They pretty much duplicate the make-up of the Workers' Compensation lawyers, but they are not lawyers. Because the California Workers' Compensation court system is an *administrative court*, anyone, including you, can be a Hearing Representative and represent a doctor or other lien claimant. Some Hearing Representatives are the children of the lien claimants they represent, usually a son or daughter who "hasn't found himself yet" and has time on his hands. Since they don't know anything about the law or even much about the case the lien is attached to, they are easy pickings for the lawyers.

Other Hearing Representatives are paralegals, some of whom are as competent as the best Workers' Compensation lawyers. One, when asked how she could routinely trounce lawyers in Workers' Compensation Court, laughed and said that she read the five inch thick file the night before going to court, while almost all of the lawyers read the case file in the elevator going up to the courtroom. When reminded that most of the Workers' Compensation courthouses in California are one story buildings and don't have an elevator, she laughed and said that was the point, that she was prepared and most of the lawyers didn't have a clue what the case they came to court to work on was about.

Because the fees awarded to Workers' Compensation lawyers by the Judges are quite low (about \$1,000 for a few years work), these lawyers try to have a few hundred cases going at one time. If fifty get settled in one year, they may earn \$50,000 that year. With this in mind, it's easy to see why most Workers' Compensation lawyers wouldn't have a clue what the case is that they are about to argue unless they sat down for a few hours the night before the mandatory conference or trial and read through the file to remind themselves of the facts of the case. Very few do.

## **More preparation for the trial**

By the luck of the draw, Ms. Joyless's case was assigned to Judge Awestruck. When he saw that the law firm of Shmoozer and Arrogant was set to argue a case in his court, and that the great Mr. Shmoozer was the attorney of record and would actually be in his courtroom, his heart began to flutter. You see, Mr. Shmoozer is a Superstar in the Workers' Compensation hierarchy. He became a superstar the same way Hollywood superstars do. He had a press agent who orchestrated a constant

stream of flattering press statements, and name dropping, and after he became well known he managed to get assigned to lawyer-judge committees. He regularly is written up in law newspapers and magazines touting his genius. All this, of course, cost him some money. Except for those times when he tooted his own horn. At the drop of a hat he will tell all that will listen about his private jet plane and his ocean going yacht and all the Governors' Mansions he has been an overnight guest in. He lets everyone know that he is rich and rubs elbows with the rich and famous. He lets everyone know that they aren't Superstars, while he is. He psychs out his competition, and the judges he appears before.

In the ten years (yes, we're up to ten years) since Ms. Joyless' Workers' Compensation suit was first filed, there were numerous meetings at the court, numerous visits by Ms. Joyless to doctors for treatment and medical and psychological tests, many legally binding statements given under oath in the form of depositions, which were questions asked by Business Middlemen's attorneys that were phrased in such a way as to make Ms. Joyless seem unreliable at best and a liar at worst, and questions asked by Mr. Average to make Ms. Joyless look good. Mr. Average wanted to avoid all of these depositions and proceed to the trial as quickly as possible, since he knew that his client was in desperate financial straits. He also wanted to settle the case as soon as he could, since he didn't get paid by the hour, so he wouldn't make any more money if the case was drawn out than if it was settled quickly.

Mr. Shmoozer and Mr. Arrogant, on the other hand, wanted to spend as much time as possible in court to charge their \$300 per hourly fees, which increased over the years to \$700 per hour, and also to put off the possibility that the judge would rule that Ms. Joyless was an employee, which was what they were hired to see didn't happen. All of the delays and legal maneuvering were to their advantage, and to Ms. Joyless and her attorneys' disadvantage.

During the ten years since the suit was filed, there were reports which had to be read and analyzed, and strategy meetings had to be held, and letters had to be written and telephone calls had to be made, all of which were billable hours for the law firm of Shmoozer and Arrogant. And if five hours were charged from time to time for "research" when no research was actually done, well, who would know? No one.

While the court conferences and pre-trial meetings were going on, people would wander in and out of the courtroom. Some of them also had conferences assigned to that courtroom at the same time as Ms. Joyless' case. Some had other matters to see one another about or to see the judge about. Often, with all the people coming and going and all the different conversations taking place about the various cases, the courtroom seemed more like zoo than a court. On Ms. Joyless' case alone, there were at one time 27 lien claimants, and each one, or a representative of each one, was required to attend each of these conferences, even though there was absolutely nothing for them to do. There were doctors, pharmacies, photocopy services, laboratories, x-ray technicians and even an interpreter represented.

Mr. Shmoozer and Mr. Arrogant were not obligated to discuss liens until the judge ruled on Ms. Joyless' case. If he ruled that Ms. Joyless was not an employee, then

Business Middlemen would not be obligated to pay the lien claimants anything, so why negotiate with them? The only exception were those doctors who did medical-legal evaluations and wrote their reports for the use of the court. But there was no legal obligation for the law firm of Shmoozer and Arrogant to talk to them until the judge made his ruling.

Judge Awestruck seemed to enjoy the “party” atmosphere in his courtroom. He would joke around with the attorneys, especially his hero, Mr. Shmoozer, and to a lesser extent, Mr. Arrogant. He seemed to enjoy the power he had when he told all the lien claimants that they must attend all hearings or he would disallow their claims, even though everyone knew that the liens wouldn’t be addressed until the main case of Joyless vs. Business Middlemen was settled. Judge Awestruck could be accused of power tripping. He could respond that he was just being methodical and prudent. So for years and years, the lien claimants, or their representatives, would show up at court every few months and sit and read newspapers or chat and wait while Mr. Average and Mr. Shmoozer and Mr. Arrogant spent a few hours shuffling papers, and then adjourned to reappear in a few months for a repeat performance. All this over a ten year period.

In the course of these hearings, Mr. Shmoozer took the opportunity to shmooze with Judge Awestruck. He knew that the judge’s attitude toward him was important to his case. He was fortunate in the fact that the Judge had a more than slight case of hero worship, thinking that Mr. Shmoozer was the greatest defense attorney who ever entered his court. In the meantime, Mr. Shmoozer’s partner, Mr. Arrogant, spent some of his time trying to intimidate the lien holders. He would say things to the hearing representatives like, “You don’t understand how these things work because you aren’t an attorney, and you are not going to be paid for your lien. You might as well go home and stop wasting your time.” Some did.

Mr. Arrogant lived up to his name by literally snarling while talking to everyone except for Mr. Shmoozer and Judge Awestruck. His lip curled, a little spittle formed at the corners of his mouth, and he let everyone know, with a toss of his head, that he was a senior partner in a very large law firm, and they weren’t. One of his one-upmanship ploys was to stop a conversation in mid sentence and take out his cell phone and make a call to another client. When he finished he’d take out a pocket notebook, look at his watch, and write down the length of time the conversation took and what was said, so he could bill for it, and then he would turn on his heels and walk from the room, to sit in his luxury car, to return about 45 minutes later and resume the conversation at the point where he had broken off.

The best way to think of Mr. Shmoozer and Mr. Arrogant is as “good cop, bad cop”. After spending some time with Mr. Arrogant, other lawyers and hearing representatives were thrilled to talk to the affable Mr. Shmoozer. True, Mr. Shmoozer lied and misled, but that’s normal for lawyers. At least he was oh so pleasant when he did it. After speaking to Mr. Shmoozer, having to speak to Mr. Arrogant about something felt like a punishment.

Ms. Joyless’ case was finally set for trial. The trial itself took about 25 hours, including delays, that were spread over six trial days, which were spread out over eight

months. Sometimes delays resulted from a lawyer or witness having the flu, and other times from a scheduling error. One scheduling error involved Ms. Joyless' interpreter, who didn't show up for a trial date. After waiting a few hours for her, everyone was told to go home by the judge.

Mr. Average decided to use an interpreter for two reasons. First, to make Ms. Joyless feel more confident and relaxed. Second, since he was contending the contract signed by Ms. Joyless stating that she was an independent contractor, and not an employee, Mr. Average was going to argue that Ms. Joyless didn't understand the contract, so he wanted an interpreter to show the judge how poor her English was.

By the time the trial began, Ms. Joyless' house was near foreclosure because she had only been able to work for short periods of time before having to quit due to her back pain, she still didn't have a car, much of her furniture was sold for food money, and she had out of control credit card bills which she could no longer make the minimum payments on. She did receive a small amount of money in state Disability Insurance payments. Additionally, she received some money from her family in Europe, which was ironic since most immigrants to America send money to relatives living in other countries. She was close to destitute and desperate to have the case resolved. How frustrating this must have been for her, a woman whose annual income in 1989 was close to \$60,000.

## The Trial

As mentioned earlier, unlike a trial in a civil or criminal court, Workers' Compensation trials don't run on consecutive days. When the judge tells everyone to go home for the day, a new trial date is scheduled, which is usually six to ten weeks away. So, in the instance when Ms. Joyless' interpreter didn't appear (because she wasn't properly notified of the trial date), Business Middlemen's lawyers got paid \$700 an hour for waiting for the interpreter to appear, and when Judge Awestruck canceled the trial for the rest of that day, a new date, seven weeks away, was selected.

Even on those days when the trial was scheduled and everyone needed was present, and it wasn't "bumped" for another trial which was also scheduled for that time, the trial often didn't begin until after the lunch break ended at 1:30. Why the trial didn't begin at 8:30 in the morning when it was scheduled for wasn't discussed. The judge decides when things start, and no one argues. During the waiting time, Mr. Shmoozer could sometimes be seen slipping into Judge Awestruck's office, without being accompanied by Mr. Average. This is improper behavior on the part of Judge Awestruck, who is not supposed to see the attorney for one side of the case without having the other side represented. After all, can the judge and the lawyer for one side be trusted? Apparently not. That's why all concerned parties are supposed to be present when one wants to chat with the Judge. Even though the Judge and Mr. Shmoozer huddled together without Mr. Average being present, no one who noticed complained or spoke up. Or even told Mr. Average. As mentioned earlier, the lawyers and representatives who appear in Workers' Compensation court are a motley group. They tend to be afraid of their own shadows. They ignore a lot of things. To be

charitable, if they “make trouble”, the judge might hold it against them and award them next to nothing for many hours “work” over a few years time. They realize that it’s best to keep their mouths shut.

Even before the trial began, Mr. Shmoozer and Mr. Arrogant saw the handwriting on the wall. They knew the judge would probably rule against them, even though Mr. Shmoozer had been doing some of his best shmoozing with the judge. They knew from looking over the evidence that any idiot could tell that Ms. Joyless was an employee, and so they had to prepare for the inevitable. They couldn’t let an insignificant Workers’ Compensation judge rule that Ms. Joyless was an employee of Business Middlemen. That was just what they were hired NOT to have happen. Any half-witted Workers’ Compensation attorney could have lost this case, and charged Business Middlemen a few hundred dollars for doing it, not the million dollars Mr. Shmoozer and Mr. Arrogant’s bills probably amounted to over the years. They needed a way to make the coming ruling go away. Or at least, not make them look bad to their client, Business Middlemen.

Their dilemma was simple. If Judge Awestruck ruled that Ms. Joyless was an employee, they could appeal the ruling. But if they appealed the ruling, they would be broadcasting Judge Awestruck’s decision. An appeal might get written about in a law newspaper or law review, and that would be too much exposure. Someone, somewhere, was bound to see the implication of the case, and notify the IRS. So appealing the decision would do more harm, they thought, than good. But if the judge ruled that Ms. Joyless was an employee, and the case was not appealed, Business Middlemen would be put on official notice that they were mis-classifying at least one of their employees, and since she did exactly the same job under the same conditions as about 1,500 others, then they were mis-classifying as many as 1,500 workers. And once put on official notice, it would be up to Business Middlemen to reclassify them, and turn themselves in to the IRS, or be prepared to show the IRS at some future time why they hadn’t. So Mr. Shmoozer and Mr. Arrogant found themselves in a lose-lose situation. No matter if they appealed the coming ruling or not, they were in trouble. Of course, maybe the judge would rule that Ms. Joyless was an independent contractor. He wasn’t overly bright, and maybe he was so awestruck with the celebrity lawyers in his court that he would come out with a joke of a judicial ruling. But then Mr. Average would appeal, something which needed to be avoided. What to do, what to do, wondered Mr. Shmoozer and Mr. Arrogant.

Mr. Shmoozer and Mr. Arrogant hatched a plan **Machiavelli** would be proud of. At this point I must say that I can’t prove the following, since no one is talking, although a Federal prosecutor probably has the power and tools to find out just what did happen. I assume the following: Mr. Shmoozer spoke to Judge Awestruck, in private, either in person or by telephone, just before the judge made his ruling. Privately chatting with each other is something they had been seen doing a number of times, so my supposition that they had a private chat is not without a factual basis. I speculate that Mr. Shmoozer suggested that if the judge were to find in favor of Ms. Joyless, ruling that she was an employee, but then give her only a tiny award, it would be appreciated. This, Mr. Shmoozer explained, would make Ms. Joyless and Mr. Average anxious to make a deal for a meaningful amount of money, in return for renouncing their contention that Ms. Joyless had been an employee.

The renunciation could be a legally binding one, which would overturn the judge's ruling. Ms. Joyless, in order to get more money, would sign a statement saying that she admits that she was never an employee of Business Middlemen, and the judge would sign it, and then he'd set aside his ruling that she was an employee. The effect would be that the court would have come to no decision in this matter. Instead, the parties would have come to a negotiated settlement, *after* the judge had made his ruling, and after ten years of meetings to attempt to come to a negotiated settlement.

This was the plan. At the end of the trial, Judge Awestruck ruled that Ms. Joyless was, indeed, an employee of Business Middlemen. He ordered that the liens be paid by Business Middlemen. The fact that it took ten years to decide this is a farce. You see, the IRS has a list, available to the public, of 19 questions used to determine if a person is an independent contractor or an employee. Answering "yes" to any one of these 19 questions is enough for the IRS to conclude that the individual is indeed an employee. If asked, Ms. Joyless could have answered yes to 14 of the questions. Mr. Average could have asked the IRS to rule on Ms. Joyless' work status, and used that decision to get Business Middlemen to drop that issue and concentrate on the amount to be paid Ms. Joyless for her lost wages, damaged property and pain and suffering, due to her on-the-job accident. Additionally, this would have negated the need to deal with the issue of the employment contract. If the IRS said she was an employee, the contract was meaningless. But since he wasn't a particularly brilliant attorney, just an average one, Mr. Average didn't ask the IRS for a ruling. Maybe he didn't know that the IRS could determine Ms. Joyless status. He isn't saying.

At this point in our story the important thing is that Judge Awestruck ruled that Ms. Joyless was an employee, and by extension, all the other workers who were called independent contractors at Business Middlemen were also employees. This is just what Mr. Shmoozer and Mr. Arrogant were hired to see didn't happen. In his ruling the Judge awarded Ms. Joyless \$6,750, and her lawyer ten percent of that, a whole \$675. If Mr. Average was an employee of a law firm instead of in business for himself, this might have violated the labor laws since it amounted to less than minimum wage for the hours he put into the case, according to Mr. Average. Mr. Average was upset, but being a Workers' Compensation lawyer, he bit his lip and "took it". Workers' Compensation lawyers aren't known for making waves, or for standing up for themselves. Nor in many cases, known for standing up for their clients. After ten years, Ms. Joyless' house was one month away from foreclosure, because she hadn't recovered enough from her injuries to hold down a full time job. Additionally, the *cocktail* of pain and other medications prescribed by a variety of doctors made it difficult for her to find meaningful employment, because she was now in a slightly dazed condition due to the over medication and mis-medication by her doctors. She was also increasingly suicidal. Ms. Joyless was devastated by Judge Awestruck's ruling. She won, but she got next to nothing for ten years of hell, and she realized that she would lose her house and might have to go on welfare.

Mr. Shmoozer and Mr. Arrogant weren't very happy, either. Neither was Judge Awestruck. Although he had to rule against his new buddy Mr. Shmoozer, he could at least award next to nothing, as Mr. Shmoozer wanted him to do. And after all, Mr. Shmoozer was going to use a small award as leverage and offer Ms. Joyless a lot more

money, so she wouldn't be financially hurt. No one would be hurt, reasoned Judge Awestruck. Ms. Joyless would get a reasonable amount, her attorney Mr. Average would get a reasonable amount, Mr. Shmoozer and Mr. Arrogant would be able to tell Business Middlemen that as far as the court was concerned, Ms. Joyless was an independent contractor because she signed a statement to that effect, with the advice of her attorney, and the judge okayed it, and so all of them would be happy. Even Judge Awestruck would be happy because everyone else would be happy, especially Mr. Shmoozer and Mr. Arrogant.

So Judge Awestruck made his ruling that Ms. Joyless was an employee, and that the outstanding liens be paid by Business Middlemen. About two weeks later, Mr. Shmoozer and Mr. Arrogant called Mr. Average and made him the following offer: If Ms. Joyless agreed, in writing, that she never was an employee of Business Middlemen, Business Middlemen would, just because they were nice guys, see to it that Ms. Joyless was paid \$67,500 and Mr. Average was paid \$6,750. Mr. Average did some counting on his fingers and toes, and decided that \$6,750 was a lot more than the \$675 the judge had awarded him. Ms. Joyless didn't take any persuasion to accept ten times what the judge awarded her. She stopped crying just long enough to shout, "YES!"

Of course, Mr. Average could have appealed the tiny financial award, and sought a lot more money, including interest, from an appeals judge. But that would probably have taken a few more years, and there was no guarantee that the appeals court would award Ms. Joyless more money. Mr. Average, and Ms. Joyless, after ten years of battling, were happy to take the deal. And Mr. Shmoozer and Mr. Arrogant were happy. With a signed statement by Ms. Joyless saying that she admitted that she never was an employee, the Judge would *set aside* his original ruling that she was an employee. After all, how could Ms. Joyless have been both an employee and an independent contractor at the same time? If Judge Awestruck accepted her statement that she was always an independent contractor, how could she be an employee as he had ruled? She could be one or the other, but not both simultaneously. Judge Awestruck could refuse to accept Ms. Joyless' statement that she was never an employee of Business Middlemen, but then she wouldn't get \$67,500, but only \$6,750, and Mr. Shmoozer would be upset with him. So the best thing for Judge Awestruck to do was to accept the agreement among the parties, and set aside his ruling.

While I don't know exactly what was said, I do know that Mr. Average and possibly Ms. Joyless, and Mr. Arrogant and/or Mr. Shmoozer, met with Judge Awestruck in the Judge's office. The day and time of this meeting is not known, nor do I know exactly who was present, or what was said, because no one, including Judge Awestruck, Mr. Shmoozer, Mr. Arrogant, Mr. Average and Ms. Joyless, would say.

None of the doctors and others who had liens still to be settled were invited. The judge may have reasoned that this was a meeting between the principle parties to discuss his ruling about the main point of the trial, and for him to decide whether to accept the negotiated settlement between Ms. Joyless and Business Middlemen, and so the meeting didn't affect the lien holders. At this meeting the judge was given the document for his signature. In this document Mr. Average told the Judge that he had been wrong for the past ten years, and that Ms. Joyless was really an independent

contractor, and that the Judge had been wrong when he ruled that Ms. Joyless was an employee. Mr. Shmoozer and Mr. Arrogant told the judge that although their client was under no legal obligation to pay Ms. Joyless anything, Business Middlemen would, out of the goodness of their hearts, pay Ms. Joyless ten times what the Judge ordered she be paid, and they would pay Mr. Average ten times what the judge ordered he be paid. Judge Awestruck accepted and signed the agreement. As planned by Mr. Shmoozer and Mr. Arrogant, Judge Awestruck then set aside his ruling, admitting in a manner of speaking that he was wrong when he ruled that Ms. Joyless was an employee. After all, the agreement said that she never was an employee, and he accepted the agreement as valid, so he must have made a mistake when he ruled that she was an employee. Further, by accepting the agreement, Judge Awestruck ruled, in effect, that no trial had taken place.

Of course, technically speaking, the money Business Middlemen agreed to pay Ms. Joyless, out of the goodness of their hearts, wasn't a bribe to Ms. Joyless and Mr. Average. It was the judicial equivalent of a "campaign contribution" to a politician. They aren't bribes, either. As for the "goodness of their hearts", this is the same company that fought Ms. Joyless' claim for ten years. Where was their good heart during that time? Oh, silly me. This case had nothing to do with Ms. Joyless getting compensation for an on-the-job injury, but everything to do with keeping the IRS ignorant of the fact that Business Middlemen was intentionally mis-classifying employees to gain both a tax and business advantage.

By the time of the secret meeting in Judge Awestruck's office, Ms. Joyless was acting so unlike herself that her sons called relatives in Europe and told them how worried they were about their mom. The relatives paid for her to come for a short visit and talk about her moving back to Europe. Mr. Average said it would be another few months until she got paid the settlement, so Ms. Joyless went on a week's vacation. When she arrived, her relatives decided to take her to a hospital, where she spent six weeks being slowly detoxified from the cocktail of pills the various doctors had put her on. After being detoxified, she said that she could think clearly for the first time in years. She decided to go home, collect her money, see how the real estate company she hired to sell her house before it was foreclosed was doing, pack up her clothes, kiss her sons good-bye, and move back to a saner place than California.

The question of why Judge Awestruck made his original ruling the way he did, and then set aside his award and accepted the travesty laid out by the opposing lawyers, needs to be thought through a little bit more. I mentioned that it's possible that he saw his ruling as being a *win win* situation for everyone concerned. But maybe he was so awestruck that he just wanted to be liked by Mr. Shmoozer, and didn't care about Ms. Joyless' legal rights. Or maybe there was another reason. Maybe Mr. Shmoozer offered to take Judge Awestruck on one of his well known yacht trips, maybe to Mexico, or maybe even to Hawaii? I can't say. Maybe Judge Awestruck is just dumb. Maybe he thought that he had made a mistake, and that the nice lawyers were just pointing it out to him, and he was rectifying it by signing-off on the agreement among the lawyers. Maybe he really thought the agreement was legitimate and fair, and made legal sense.

## The Best Laid Plans of Mice and Men...

Regardless of the motivation, Judge Awestruck voided his ruling that Ms. Joyless was an employee. It amounted to a very loud, "NEVER MIND!" However, instead of making everyone happy, as he thought it would, he would find that he made some lien claimants' Hearing Representatives very unhappy. You see, when Judge Awestruck ruled that Ms. Joyless was an employee, he also ruled that the outstanding liens be paid. But when he voided his ruling, there was no legal reason why Business Middlemen should pay the lien claimants anything.

Eight weeks after the secret deal was struck, the Hearing Representatives were back in court, thinking that it was their chance to present their bills to Mr. Shmoozer and Mr. Arrogant, since the last they heard Judge Awestruck had ruled that Ms. Joyless was an employee and ordered that the liens be paid. The Hearing Representatives did not know that a meeting had taken place, nor were they notified that Judge Awestruck had reversed himself, even though they were required to be notified by law. Nor were they told that instead of presenting their bills, they were going to be told that Business Middlemen was not obligated to pay them anything. The Hearing Representatives found out about the secret meeting and its outcome when they appeared in court. They were shocked. Most just grumbled though, since they were used to being messed over by lawyers and judges. This, to many, was business as usual, sort of like what happens in movie and book depictions of the legal systems in corrupt countries. But one Hearing Representative got angry, the one who did her homework and routinely trounced Workers' Compensation lawyers. She was annoyed when Mr. Shmoozer offered to pay her client 50% of his ten year old bill, even though, Mr. Shmoozer claimed, he didn't have to pay anything. Since the judge had reversed himself and agreed that Ms. Joyless was never an employee, why was Business Middlemen obligated to pay anyone anything, Mr. Shmoozer said, in his affable way. Paying 50% of the bill was being very nice, he said. The Hearing Representative, Ms. Piqued, saw red.

At this point, the lien claimants became the plaintiffs in the case against Business Middlemen. Ms. Joyless, who was still waiting for her money from Business Middlemen, had bought a one way ticket to Europe and was planning on leaving in a few weeks, when the sale of her house was finalized. Mr. Average saw his job as being done. He was hired to represent Ms. Joyless, and he saw to it that she would get \$67,500 for her injuries. Any problems the doctors and pharmacies and physical therapists and others had in collecting their fees was their problem, not his. The fact that he had asked them to work on this case didn't seem to bother him. The fact that their reports and therapies were instrumental in the judge's original finding that Ms. Joyless was an employee who was injured on the job didn't bother him. The fact that he sold them out by reversing his position of the past ten years, didn't bother him. It was up to them to present their cases to the Judge, and try to collect their money. Mr. Average knew that the cards were stacked against them, and that he had helped stack the cards. Only the State of California's Employment Development Department was represented by an attorney, Mr. Straightarrow, someone who was kept on salary full time to deal with these kinds of situations. All the other lien claimants were represented

by hearing representatives, most of whom were paralegals who were not well versed in Workers' Compensation law.

Judge Awestruck told the assembled lien claimants to prepare for a lien trial to be held in six weeks. A lien trial is a hearing, with the judge presiding, where the lien claimants, usually through their representatives, present their legal arguments in favor of their bills being paid, while the defendant argues the legal reasons they should not have to pay the bills. If the lien claimants were going to get their bills paid, they were going to have to prove to the judge that their bills were legal and valid. The day after Ms. Piqued found out about the secret ***and illegal*** meeting and the judge's reversal of his ruling, she wrote a letter to him asking a number of questions, including: Who requested the meeting between the judge and lawyers; who was present at the meeting; what was said; and the legal reason for the judge reversing himself.

Additionally, she raised the issue that the agreement and the judge's acceptance of it was illegal, since it violated the lien claimant's right to due process. Since they were excluded, they weren't present and so couldn't object to the judge setting aside his original ruling. This reversal made it more difficult for them to collect their liens, and if they were present they could have raised legal arguments why the agreement should not have been accepted. Judge Awestruck avoided answering the questions in the letter. Instead, he sent a response saying, in effect, "I can't answer your letter". Possibly some of Mr. Arrogant's arrogance rubbed off on Judge Awestruck, since he is legally obligated to furnish such information. Judges cannot make decisions, including reversing a decision, without explaining the legal reasoning for doing so. Otherwise, no one would ever know what parts of the law were being applied in a decision, and whether there were reasons for an appeal.

After receiving Judge Awestruck's non-reply to her letter, and in preparation for the lien trial, Ms. Piqued decided to prepare a trial brief. The case by this time was so complicated that it seemed impossible to argue orally in front of the judge without prior organization in writing, and that is what a brief does- it organizes the salient points in a logical manner. The trial brief was not written solely for Ms. Pique's use. She knew that it would become part of the case file, and that it would probably be read by an appeals court judge sometime in the future, if she, or someone, decided to appeal any ruling the judge might make. The brief laid out the strange legal twists and turns of the case, and mentioned that she had not received meaningful answers to her questions in the letter regarding the secret meeting. Finally, she spelled out, in little itty bitty words, why it was absurd that Judge Awestruck reversed himself.

*In essence, Ms. Piqued used the guise of a trial brief as a means to write a formal letter complaining about Judge Awestruck, and how he ran his court, to other, senior, judges. She knew that once the brief was sent to the court, it was going to be in the case file for good. The issues couldn't be swept under a rug. They couldn't be ignored by Judge Awestruck. He couldn't be arrogant. Some day, some other judge was going to ask Judge Awestruck to explain himself. Additionally, as pointed out in the brief, possibly a prosecutor and the IRS would ask Judge Awestruck some questions.*

This brief was written to put these issues on the record, and it also served the

purpose of unnerving the judge. Here, in a document that was now a part of the case file, was the first mention of possible illegal activities involving violations of tax and other laws, and implied that bribery might be an issue. Judge Awestruck had not ordered the parties to prepare trial briefs, and the other hearing representatives and the EDD lawyer, Mr. Straightarrow, did not bother to do so.

Ms. Piqued represented Dr. Good, one of the doctors who had examined Ms. Joyless and prepared reports for her attorney to use in her case. Since Dr. Good's services were part of the legal case rather than for treatment, he should have been paid in full automatically. Payment for liens for treatment, including those from doctors and pharmacies, etc., depend on a judge ruling in favor of the injured worker. If a judge rules that an injury wasn't work related, for instance, then the treatment liens don't get paid, or only partially paid. But liens for services which are used as evidence by lawyers are part of the legal proceedings and are supposed to be paid in full.

Ms. Piqued was not happy with Mr. Shmoozer's offer to pay only 50% of Dr. Good's medical-/legal bill. She was well aware that her client was very ethical and did excellent work and she was determined to do her best to assure that he would be paid in full. Furthermore, since Dr. Good had not been paid in a timely manner, he was also entitled to penalties and interest. Of course Mr. Shmoozer and Mr. Arrogant didn't want to pay these charges, either. This position was unusual, since bills like Dr. Good's are routinely paid as long as the necessary paperwork is complete and in order, and his was. Ms. Piqued realized that Mr. Shmoozer and Mr. Arrogant were upset at how their case had gone, and they wanted to lash out and hurt someone, and to show Business Middlemen that they were going to save them a few thousand dollars by not paying Dr. Good's bill. They thought that the fact they were going to bill Business Middlemen far more to fight paying the liens than the amount of the liens they were refusing to pay, would go unnoticed by Mr. Sonoftheboss. "Why pay \$20,000 in liens, when we can bill \$50,000 for not paying them", reasoned Mr. Shmoozer and Mr. Arrogant.

Besides wanting Dr. Good to be paid and not "ripped off" by Mr. Shmoozer and Mr. Arrogant, Ms. Piqued was angry with just about everyone involved with this case. She wanted to use the system to punish the lawyers, who were now using the system to punish the lien claimants. She wanted blood, of sorts. Of all the Hearing Representatives, she was the only one with some spunk. The rest shrugged their shoulders and wrote the mess off as business as usual in the Workers' Compensation Court system.

When the day of the lien trial finally arrived, Mr. Arrogant and Judge Awestruck decided that it should be delayed. Mr. Arrogant simply wanted to bill more hours. Judge Awestruck decided to wait until 4:00 PM and then sent everyone home to reassemble in eight weeks. While waiting for the Judge to begin the trial, Mr. Arrogant walked over to Ms. Piqued and stood about six inches from her face and said, "Dr. Good isn't going to get one red cent", and then he turned and strode away. This could be thought of as an example of how Mr. Arrogant liked to psych out the competition. But Ms. Piqued saw this as Mr. Arrogant reacting to the brief she filed with the court. He wasn't happy with her. So he was going to take it out on her client. Interestingly, Dr. Good was well known to the law firm of Shmoozer and Arrogant, because he had been

hired by them many times in the past to do work for them. They knew he did excellent work and was entitled to his lien being paid.

At this point Ms. Piqued was irate. On her way back home, which was an hour and a half drive from the courthouse, she called the IRS and alerted them that Business Middlemen had been improperly categorizing many employees as independent contractors. She supplied the IRS with sufficient information to qualify for a reward which in this case could amount to \$50,000. Ms. Piqued felt a little better. But just a little.

On the date the new Lien Trial was scheduled, everyone once again met in court, except for those hearing representatives who were either sufficiently misled or intimidated by Mr. Arrogant. As was becoming usual, Mr. Arrogant wasted several hours which he charged his client for, as he shuffled papers on the desk in the court room, and as he made phone calls to other clients. Although the case was scheduled for 8:30 AM, the Trial didn't actually begin until after the lunch break, thus wasting everyone's time. (That is, except for Mr. Arrogant's time.)

After the lunch break, Judge Awestruck entered the courtroom. Before going on the record he spoke to everyone about his own problems with the case. He had *finally* realized that he would ultimately have a problem with his superiors about his changed decision. He realized now that because there was no legal reason for the medical-treatment liens be paid, one or more of the lien claimants who had "stuck it out" were going to appeal the decision and the entire case file would be sent to a higher court for review, including the letter and scathing brief sent by Ms. Piqued. Judge Awestruck wanted Mr. Arrogant (Mr. Shmoozer was nowhere to be found, and hadn't been at court for a while), the Hearing Representatives, and Mr. Straightarrow, the attorney for the EDD, to help him figure out how to avoid the problems a review by an appeals court would cause him. No one present offered any help or suggestions. (No one thought to say that if all the liens were paid in full, out of the goodness of Shmoozer and Arrogant's heart, then no one would want to appeal to a higher court.) Judge Awestruck looked stressed. He turned and asked Mr. Arrogant for suggestions how he could limit the amount of trouble he was in. Mr. Arrogant said he couldn't help. Judge Awestruck felt deserted. It was, after all, Mr. Shmoozer and Mr. Arrogant who got him into this mess, (setting aside his own responsibility in the matter), and now Mr. Arrogant simply shrugged his shoulders when he was asked to help. The judge then turned to Ms. Piqued and asked her if there was any reason that her letter to him and his (non) response needed to be in the court file. Couldn't they be removed, he wanted to know. Ms. Piqued said she thought it was best for the letters to remain in the file. Judge Awestruck said that if Ms. Piqued was a competent attorney, she should know the answers to the questions she asked him in the letter. Ms. Piqued responded that if she were a competent attorney, there is no way she could know what went on in a closed door meeting she didn't attend, but that was still beside the point, since she isn't an attorney, but just a Hearing Representative. Judge Awestruck just looked at her for a long minute, not a friendly look, and then turned his attention back to the lien trial he was supposed to be holding. All this time he thought Ms. Piqued was an attorney. The humiliation of being gotten the better of by a lowly Hearing Representative was beginning to sink in. Lawyers, and judges, hate when that happens.

Judge Awestruck's plea for help was unusual to say the least, and given from the bench in court (but without a court reporter taking it down) may have been unprecedented. He realized that he was in trouble, that he had been accused in a brief of possibly taking a bribe to conceal tax fraud from the IRS, and additionally, of possibly concealing from the State of California tax fraud against the State.

It was at this time that the attorney for the State EDD, Mr. Straightarrow, **administered the Coup de Grace**, when he casually mentioned that he had changed the tax status of those Business Middlemen employees who worked in California from being independent contractors to being employees. It turned out that EDD had the legal authority to make that ruling. When Mr. Straightarrow first began monitoring this case, he viewed it as business as usual. But after seeing how arrogant Mr. Arrogant was, and how awestruck Judge Awestruck was, and how Mr. Shmoozer shmoozed with the Judge, and after finding out about the secret meeting setting aside the ruling and terminating the order for Business Middlemen to pay the remaining liens, including the one filed by the EDD, and after not being notified of the reversal of the original ruling, Mr. Straightarrow realized that something was "rotten in Denmark" and decided that he needed to do something to clean it up. He looked into the employment status of Ms. Joyless, something which should have been done previously by an EDD clerk, but wasn't. Basing his evaluation on the IRS rules that Mr. Average could have used to shorten the courtroom time by many years, Mr. Straightarrow recognized that Ms. Joyless met fourteen of the nineteen points used to classify people as being an employee, when only one was needed to put her in that category. He personally notified the appropriate office of the IRS that Business Middlemen's California tax status regarding its independent contractors had been changed. Mr. Straightarrow told Ms. Piqued that once notified, the IRS accepted the ruling of EDD as legally binding, although Business Middlemen was free to appeal. For such an appeal, they will not use Shmoozer and Arrogant, but a different law firm, one that specialized in tax law, and which will drag the proceedings out as long as possible.

Regardless, just what Mr. Shmoozer and Mr. Arrogant were hired to see didn't happen, did happen. Ms. Piqued notified the IRS, and the State of California notified the IRS. And the IRS has reclassified Business Middlemen's independent contractors as employees. Mr. Arrogant was trying to look brave, after hearing that the EDD had reclassified the status of the workers. He realized that there would probably be hell to pay for Business Middlemen. Judge Awestruck heard the legal arguments from the few lien claimants who managed to stick it out for ten years, trying to get paid for the work they did. He also listened to the arguments made by Mr. Arrogant. After listening to all the arguments, Judge Awestruck said he'd give a ruling in writing within ninety days. Mr. Arrogant and Ms. Pique and Mr. Straightarrow each said, when walking out of the courtroom, that they would appeal the ruling of the judge if it went against their client's interests. Regardless of how Judge Awestruck ruled, it was going to go against at least one side's interests. Of course, any ruling made by Judge Awestruck had to be considered a temporary ruling, and before it is appealed, he might change it to something else. Depending on who gets to him and shmoozes the best.

Since the IRS has been notified, the issue of Mr. Shmoozer and Mr. Arrogant

wanting to avoid an appeal became a non-issue. The cat was already out of the bag. But if all the lien claimants were paid in full, then none would appeal, and the appeals court judges wouldn't get wind of the strange circumstances of this court case. This would be a great help to Judge Awestruck. It would be easy for Mr. Shmoozer and Mr. Arrogant to see that all the lien claimants were paid in full, and help Judge Awestruck out. This would have given Judge Awestruck a way out of his predicament. But Mr. Shmoozer and Mr. Arrogant are lawyers, and, as I'm sure you've heard, lawyers eat their young. They opted to play hardball with the lien claimants. (Nice guys!)

About two months later, Ms. Piqued received the notice from the court stating that the judge had ruled against her client, Dr. Good, since Ms. Joyless was not an employee. Ms. Piqued was furious. She sat down at her computer and typed a Petition for Reconsideration which was a document that would ultimately be sent to the Appeals Board in San Francisco. In this document, she summarized the events of the hearings and the rulings and changes in those rulings. She attached a copy of her letter to the Judge and the Trial Brief she had prepared for the Lien Trial because she was afraid they would "fall out" of the case file. These documents only had to be sent to the local Appeals Board where the case was heard, but to play it safe, she sent all of the documents to San Francisco as well as the local court. She chuckled to herself as she visualized Judge Awestruck's reaction when he found out what she had done.

Interestingly, only a few months passed until Ms. Piqued received a notice from the Appeals Court stating that her client had been awarded full payment for his lien plus penalty and interest. Such appeals usually take a year or longer to be acted on. The penalty award is unusual since it is almost never given. I think the judges were trying to send a message to Judge Awestruck.

## What **SHOULD** have been done

It goes without saying that Business Middlemen shouldn't have cheated on their taxes. If they avoided tax problems, they could have avoided the consequences that comes from getting caught. These consequences will be discussed in the next section. For now, let's look at some strategies which could have been used to help assure that Business Middlemen's secret remained a secret.

**The Fruit Basket Ploy:** When Business Middlemen was first notified that Ms. Joyless had been in a serious traffic accident, they should have sent someone to see her at the hospital, bringing a nice basket of fruit, and telling Ms. Joyless that she shouldn't worry about her job, which would be waiting for her as soon as she felt up to coming back to work, and that she'd keep getting her paycheck, and all her medical bills would be paid, and they'd even pay for her car repairs, or for a replacement car if hers couldn't be fixed. The attitude of Business Middlemen, in light of their precarious tax situation, should have been to go out of their way to keep all of their "independent contractors" happy, and certainly away from lawyers and court rooms. This is common sense. However, there are a lot of businesses that think of their employees as troublesome, and not worth treating with dignity. This might suit some business styles, but it's plain masochistic if the business has knowingly cheated on its business taxes. Both

masochistic and stupid.

**The OOPS! Ploy:** When Business Middlemen was served with notice of a Workers' Compensation law suit being filed, they should have called on tax attorneys, who would have suggested that Business Middlemen play, "Let's Make a Deal" with the IRS. "OOPS!, we just discovered that we've inadvertently mis-classified workers for many years. We'll cooperate with any investigation and we'll promptly pay any fine you levy against us. However, any criminal charges should be dropped, don't you think?"

**The Fast Payoff Ploy #1:** The law firm of Shmoozer and Arrogant should have realized that the issue wasn't about a petty judge's eventual ruling, but about the EDD, which was a lien claimant, finding out about Ms. Joyless' status. As Ms. Joyless ran out of money, she filed a claim with EDD. After EDD received the claim, they would eventually check Ms. Joyless' employment status. If they determined that she had been mis-classified and was really an employee, they eventually would have changed her status and notified Business Middlemen. This would have had the same effect as a judge ruling that she was an employee. Additionally, EDD may have looked into the status of other "independent contractors" doing work for Business Middlemen, and then changed their status. If Ms. Joyless was paid off as soon as the law firm of Shmoozer and Arrogant was hired, in return for dropping the lawsuit, the chances were good that an overworked clerk for the State EDD handling the matter would have just stamped the newly opened file "closed, settled" and sent it off to a large warehouse where files are stored and forgotten about. Since it was too late for Business Middlemen to send Ms. Joyless a basket of fruit, and since they chose not to play "Let's make a deal" with the IRS, this was the best available move to make. Just get rid of the case and pay the EDD any money they may have given Ms. Joyless, and pay the very few lien claimants at this time in full. Anything else was guaranteed to failure, regardless of how the judge ruled. The game was over at this point. The only hope for Business Middlemen was that some overworked clerk at EDD would close the file without taking the time to look into Ms. Joyless' employment status. Why didn't the very smart lawyers at Shmoozer and Arrogant know this? Why didn't they contact Mr. Average and shmooze with him, and offer Ms. Joyless \$25,000 and offer to pay her medical bills and get her a replacement car, to drop the law suit? And pay off the EDD?

One reason could be that they probably billed about a hundred thousand dollars a year for ten years on this case, which didn't take more than a few thousand dollars worth of lawyer time if billed accurately. (I say "probably" because I'm not privy to their billing records in this case, but an average of a hundred thousand dollars a year seems reasonable to me.) They may have deluded themselves into believing that the IRS wouldn't find out, that all they needed was a favorable ruling from the judge, or a favorable agreement between the parties sometime down the road. Or maybe Mr. Shmoozer and Mr. Arrogant aren't as smart as they tell everyone they are. Or, maybe Mr. Shmoozer and Mr. Arrogant aren't as smart as they tell themselves they are. Or maybe Mr. Shmoozer and Mr. Arrogant didn't count of people like Ms. Piqued and Mr. Straightarrow acting in atypical ways for Workers' Compensation professionals.

**The Fast Payoff Ploy #2:** One ploy to avoid the abyss all were about to fall into would have been to pay the EDD lien off in full as soon as possible after Judge Awestruck

made his (first) ruling and ordered that the liens be paid. Why anger the very people who could bring you down? Why anger them by offering to pay pennies on the dollar?

If the lien was paid in full the day the Judge ruled that Ms. Joyless was an employee and that the lien claimants should be paid, the case might have been stamped as “closed, paid in full” by some clerk, and that would have ended the EDD’s involvement. Not paying EDD, and angering Mr. Straightarrow, the EDD attorney, virtually insured that the EDD would look closely into this entire case, which would lead to their reclassifying Ms. Joyless. Not paying EDD in full, immediately, was arrogance at best, and incompetence at worst.

## The Consequences

At this point, let’s look at the fall-out of the case. The IRS knows that Business Middlemen had been naughty for many years, and owes bundles of money in back taxes and interest and penalties and fines. And maybe the company and some of its officers, past and present, will face criminal charges for committing tax fraud. And maybe the CPA’s who work for Business Middlemen will lose their licenses. All of this could have been avoided if either of the two following situations existed. First, that Business Middlemen paid their fair share of taxes. Or second, that they used the **basket of fruit ploy**. The money that this ploy would have cost would have been tax deductible, just as the money they paid the law firm of Shmoozer and Arrogant was tax deductible. Being nice to Ms. Joyless would have insured that their secret was kept a secret. For a while at least. Until a disgruntled employee turned them in to the IRS out of spite, for a reward, or both.

The fall out for the lawyers of the firm of Shmoozer and Arrogant might be even greater than for the management of Business Middlemen. Word about their loss of the case might eventually get around, which could cost them business. But since Mr. Shmoozer and Mr. Arrogant are officers of the court, it was their responsibility to notify the IRS that tax fraud was taking place once they were told about it and were asked to keep the IRS from finding out. Since they didn’t, it could be argued that they entered into a criminal conspiracy to defraud the IRS and the people of the State of California. Well, that is one interpretation. They would argue that the information was confidential between their client and the law firm. Mr. Shmoozer and Mr. Arrogant could just say that they were vigorously defending their client’s legal rights. Additional problems could come their way if Business Middlemen decide to sue the law firm of Shmoozer and Arrogant for inadequate counsel. After all, as specialists in the Workers’ Compensation field, they should have known that once EDD was involved, the cat was out of the bag. EDD would eventually rule on whether Ms. Joyless was an employee, in order to determine whether she was entitled to benefits. If the law firm of Shmoozer and Arrogant didn’t know this, they were incompetent. If they did know this, but continued to fight a ten year fruitless battle, in which the only winner would be their law firm, then they acted in an unethical manner, and possibly Mr. Shmoozer and Mr. Arrogant entered into a criminal conspiracy to defraud Business Middlemen.

And of course we can’t forget about Judge Awestruck. While he refused to

answer the Hearing Representative's letter asking what took place at the closed (and secret) meeting, he might not be powerful enough to avoid answering the same questions asked by a Federal or State prosecutor. Unless, of course, he takes the Fifth. The same questions could be asked of Mr. Shmoozer, Mr. Arrogant, and Mr. Average. (It will be difficult to ask Ms. Joyless, because she has left the country, vowing never to return.) Working in their advantage is that prosecuting lawyers are as jaded as most other lawyers. They might not think that the matter of a possible bribe to a judge, or of a conspiracy to defraud the State of California or the IRS of revenues, is worth pursuing. Or they may get political pressure, from political friends of Business Middlemen and/or from the law firm of Shmoozer and Arrogant, to forget the entire matter. Or, of course, various Statutes of Limitation might kick into effect. Time will tell.

As for Mr. Average, it could be argued that he should be billed for wasting the Court's time for ten years. After all, Workers' Compensation court time costs money, even if most of it is wasted time and wasted money. Regardless, Mr. Average admitted in the agreement that he signed along with Ms. Joyless that she was never an employee of Business Middlemen, although he had argued for ten years that she was an employee, and got the judge to agree with him that she was an employee. A few weeks after his victory in court, he renounced his long held position. "No, you're wrong judge, because I was wrong all these years." (I think the State of California should send him a very big bill.)

As for Ms. Joyless, did she do anything wrong, in a legal sense, in first saying that she was an employee and then saying that she wasn't? I don't know. But I do know that she has excellent defenses if she did do something wrong. She followed the advice of her attorney, and, she was so dazed by the over medication and mis-medication given her by various doctors, that she could say that she was temporarily not competent, and so is not responsible for signing the document her lawyer put in front of her. Ms. Joyless is in Europe. She thinks the U.S., of which she is a naturalized citizen, is run by crazy lawyers. She is probably right. After all, most politicians are lawyers, and they run the country.

The objectives of Business Middlemen were not met. They (presumably) paid a million dollars over ten years, all tax deductible of course, for nothing. If they brought Ms. Joyless a fruit basket and were nice to her, their tax secret would have remained safe, and it would have only cost them a few thousand dollars at most. The law firm of Shmoozer and Arrogant made a lot of money, but they may eventually have to use it to pay criminal lawyers to help keep them out of a federal or state prison. Mr. Average got his fee, and used part of it to take a vacation to Alaska, and all he had to do was admit that he spent ten years fighting a lawsuit that was specious

Finally, there is the class action law suit against Business Middlemen that should be looming over the horizon. For this to happen, some hungry attorney has to find out about this case, which is pretty much buried within the Workers' Compensation system. Or it was until now. This law suit would be based on all those workers who were improperly categorized because they were purposely misled by Business Middlemen as to their working status, and so have lost money due them from vacation pay, medical pay, etc. Some lawyer will suggest to them that they sue Business Middlemen to

recover their losses, with interest, and something more to punish Business Middlemen. Think of all this as a cautionary tale. If a large firm like Business Middlemen couldn't protect themselves from lawyers, what chance do you have?

This account was written in 2002, while it was still fresh in my mind. What further developments, or non developments, have or haven't taken place since 2002, I don't know, and I'm not particularly interested in finding out.

Well, it's now 2019, and I've just finished rereading this saga. There are two points I'm dying to make:

We learned that Judge Awstruck was transferred to the Workers' Comp Court in the desert of Bakersfield, California. A number of years ago we were told on good authority that the best restaurant there is in the bowling alley. Do you think someone was trying to send him a message?

Emma met one of Shmoozer's lawyers (Shmoozer's daughter) in workers' comp court one day and asked her to say "hi" to Shmoozer. The lawyer replied, "What, you want me to be fired?"